

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

60133

FILE: B-185103

DATE: November 10, 1975

MATTER OF: ITT Service Industries Corporation

97765

DIGEST:

1. Protest based upon alleged failure of protester to acknowledge amendments to RFP is untimely under § 20.2(b)(2) of GAO Bid Protest Procedures since protester learned of grounds for protest on September 23, 1975, and protest was received at GAO October 14, 1975, more than 10 days after basis of protest was known.
2. Pursuant to § 20.2(b)(1) of GAO Bid Protest Procedures, allegation by protester that Air Force failed to include Cost and Price Analysis Form in solicitation as stated is untimely, since protest concerns alleged impropriety in solicitation apparent prior to closing date for receipt and protest was not filed until after closing date. Furthermore, protest that proposals submitted were invalid based upon assumption they failed to include required form is untimely as basis of protest was known at time of receipt of proposals and was not filed at GAO within 10 days of such time. § 20.2(b)(2) of GAO Bid Protest Procedures.

By letter dated October 6, 1975 (received in the General Accounting Office October 14, 1975), ITT Service Industries Corporation (ITT) has protested any award of a contract pursuant to Request for Proposals (RFP) F33600-75-R-0389, issued by the 2750th Air Base Wing-RMA, Specialized Procurement Branch, United States Air Force. We have been advised that the closing date for receipt of initial proposals was September 8, 1975.

On September 23, 1975, ITT received written notification that it would not be considered for award because its proposal failed to acknowledge the incorporation of three amendments to the RFP.

ITT contends that it orally acknowledged incorporation of the amendments on two different occasions and feels that its proposal should not have been rejected.

Section 20.2(b)(2) of our Bid Protest Procedures (40 Fed. Reg. 17979 (1975)) states in pertinent part:

" * * * bid protests shall be filed not later than 10 days after the basis for the protest is known* * *."

ITT has advised us that it received notification from the Air Force on September 23, 1975, that its proposal would not be considered for the reasons stated above. Since ITT did not protest to the General Accounting Office (GAO) within 10 working days of receipt of the Air Force notification, this aspect of its protest must be considered untimely.

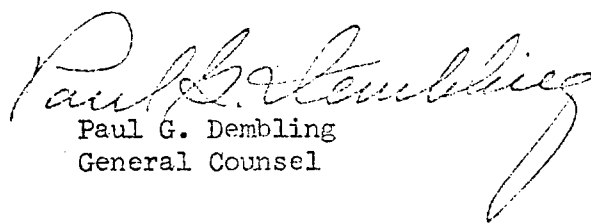
Additionally, however, ITT is protesting the failure of the Air Force to include a Cost and Price Analysis Form in the RFP package as stated in the solicitation. ITT contends that in a telephone conversation on September 8, 1975, between the contracting officer and an ITT representative, ITT was informed that the form was necessary but that the form could be signed by an ITT representative when the proposal was delivered. ITT assumes that other offerors were not furnished the subject form and contends that all proposals were therefore invalid and should be rejected. In addition, it is argued that the RFP was defective for failure to include the form as stated.

Section 20.2 of our Bid Protest Procedures, supra, provides in pertinent part:

"(a) Protesters are urged to seek resolution of their complaints initially with the contracting agency. If a protest has been filed initially with the contracting agency, any subsequent protest to the General Accounting Office filed within 10 days of formal notification of or actual or constructive knowledge of initial adverse agency action will be considered provided the initial protest to the agency was filed in accordance with the time limits prescribed in paragraph (b) of this section, * * *."

"(b)(1) Protests based upon alleged improprieties in any type of solicitation which are apparent prior to bid opening or the closing date for receipt of initial proposals shall be filed prior to bid opening or the closing date for receipt of initial proposals. * * *"

Since this aspect of ITT's protest concerns an alleged impropriety in the solicitation apparent prior to the closing date for receipt of initial proposals it had to be filed prior to the closing date for receipt of initial proposals in order to be considered timely. While it is not clear from the record whether ITT's telephone conversation with the Air Force of September 8, 1975, constituted a protest of the solicitation, assuming arguendo that it did, the Air Force's failure to take any corrective action prior to the receipt of proposals constituted adverse agency action. Since the protest was not received in our Office within 10 working days from the adverse agency action, it must be considered untimely. Cf. Unitec, Inc., B-183343, May 27, 1975, 75-1 CPD 315. Furthermore, since ITT's protest concerning the alleged invalidity of the other proposals is based upon the assumption that they did not include the required form, it is also untimely as it was not filed within 10 days after the receipt of proposals. § 20.2(b)(2)(40 Fed. Reg. 17979 (1975), supra.)


Paul G. Dembling
General Counsel